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UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

EDWARD R. BLAKE and ROXANNE R. BLAKE

Plaintiffs, CIVIL CASE NO.

-vs- COMPLAINT

UNITED STATES OF AMERICA

Defendant.

Introduction

1. This is a medical malpractice action.

Jurisdiction

2. This action arises under 28 U.S.C. §1346 (b).

Parties/Venue

3. Plaintiffs, Edward R. Blake and Roxanne R. Blake are adult individuals, are husband and wife and are citizens and residents of the State of New York and were such at all times material to this complaint.

4. Defendant is the United States of America.

Facts

5. Defendant operates a health care facility in Buffalo, New York known as the Veterans Administration Medical Center, located at 3495 Bailey Avenue, Buffalo, New York. The Defendant also operates an outpatient clinic at 166 E. Fourth Street, Dunkirk, New York 14048 to provide medical treatment and services to veterans living in that area.

6. The Defendant, in operating the aforesaid Veterans Administration Medical Center hereinafter referred to as ("VA"), held itself out to the public in general and to the Plaintiff, Edward R. Blake in particular that the Defendant, was able to provide experienced and competent medical services and that degree of care, skill, diligence, and attention used by medical centers generally in the care and treatment of patients. The medical center operated by Defendant had in its employ among others, doctors, physician assistants, nurses, nurses' aids and other medical personnel over which it exercises exclusive control and supervision. At all times, hereinafter mentioned, the aforesaid doctors, physician assistants, nurses, nurses' aids and other medical personnel were acting as agents, servants and/or employees of the Defendant and were acting in and upon the business of the Defendant and within the scope of their employment and relationship with said Defendant.

7. The Defendant, in operating the aforesaid outpatient clinic, at 166 E. Fourth Street, Dunkirk, New York 14048 hereinafter referred to as "The Clinic", held itself out to the public in general and to the Plaintiff, Edward R. Blake in particular that the Defendant was able to provide experienced and competent medical services and that degree of care, skill, diligence, and attention used by medical clinic generally in the care and treatment of patients. The clinic operated by the Defendant had in its employ among others, doctors, physician assistants, nurses, nurses' aids and other medical personnel over which it exercises control and supervision. At all times hereinafter mentioned, the aforesaid doctors, physician assistants, nurses, nurses' aids and other medical personnel were acting as agents, servants and/or employees of the Defendant and were acting in and upon the business of the Defendant and within the scope of their employment and relationship with said Defendant.

8. On June 29, 2006, Edward Blake presented to Dunkirk Veterans Administration outpatient clinic (the clinic) at 166 E. Fourth Street, Dunkirk, New York 14048 for consultation and treatment of low back pain, bilateral loss of sensation in his lower extremities and bladder dysfunction. In connection with the foregoing, the Plaintiff Mr. Blake came under the care and treatment of the aforesaid doctors, physician assistants, nurses, nurses' aids and other medical personnel at said clinic. The aforesaid medical personnel were acting in and upon the business of the Defendant and within the scope of their employment and relationship with said Defendant

in their course of treatment to the Plaintiff, Mr. Blake. At said time and place, a physician/patient relationship was established between Mr. Blake and the clinic.

9. While under such care and treatment, the condition of Mr. Blake was mis-diagnosed. The medical personnel who treated him failed to properly diagnose Mr. Blake as suffering from the classic symptoms of Cauda Equina Sundrome and failed to timely refer him for further testing, evaluation or treatment or to refer him to an appropriate medical specialist. In addition, the Defendant, was careless, reckless and negligent in that said medical personnel failed to use that degree of care and skill ordinarily used by physicians and medical personnel engaged in practice; failed to give sufficient heed to the symptoms and/or symptomology exhibited by the Plaintiff; failed to make an adequate and proper examination of the Plaintiff; failed to take the necessary and immediate steps to alleviate the condition from which the Plaintiff was suffering; failed to perform and use proper tests, procedures and examinations in order to diagnose the condition from which said Plaintiff was suffering; failed to promptly adequately and properly refer said Plaintiff to a physician capable and qualified to diagnose and treat the condition from which said Plaintiff was suffering and otherwise rendered incompetent, improper and tardy medical care to the Plaintiff, Edward R. Blake.

10. In so treating Mr. Blake, Defendant's employees and agents deviated from standard approved medical practices and negligently failed to treat Mr. Blake with the degree of skill, diligence and attention used by and expected of such medical centers generally.

11. As a direct and proximate result of the negligence of the Defendant in failing to properly diagnose Cauda Equina Syndrome, the condition of Mr. Blake deteriorated and worsened. That the foregoing occurred without any fault or want of care on the part of the Plaintiff Edward R. Blake herein and contributing thereto.

12. On June 30, 2006 Mr. Blake presented himself to the emergency room at the Veterans Administration Clinic at 3495 Bailey Avenue, Buffalo, New York (VA) for consultation and treatment of his symptoms. In connection with the foregoing, the Plaintiff Mr. Blake came under the care and treatment of the aforesaid doctors physician assistants, nurses, nurses' aids and other medical personnel at the VA. The aforesaid medical personnel were acting in and upon the business of the Defendant and within the scope of their employment and relationship with said

Defendant in their course of treatment to the Plaintiff, Mr. Blake. At said time and place, a physician/patient relationship was established between Mr. Blake and the VA.

13. While under such care and treatment, the condition of Mr. Blake was continued to be mis-diagnosed. The medical personnel who treated him failed to properly diagnose Mr. Blake as suffering from the classic symptoms of Cauda Equina Syndrome and failed to timely refer him for further testing, evaluation or treatment or to refer him to an appropriate medical specialist. In addition, the Defendant, was careless, reckless and negligent in that said medical personnel failed to use that degree of care and skill ordinarily used by physicians and medical personnel engaged in practice; failed to give sufficient heed to the symptoms and/or symptomology exhibited by the Plaintiff; failed to make an adequate and proper examination of the Plaintiff; failed to take the necessary and immediate steps to alleviate the condition from which the Plaintiff was suffering; failed to perform and use proper tests, procedures and examinations in order to diagnose the condition from which said Plaintiff was suffering; failed to promptly adequately and properly refer said Plaintiff to a physician capable and qualified to diagnose and treat the condition from which said Plaintiff was suffering and otherwise rendered incompetent, improper and tardy medical care to the Plaintiff, Edward R. Blake.

14. In so treating Mr. Blake, the Defendants, agents, servants and/or employees deviated from the standard approved medical practices and diligently failed to treat Mr. Blake with the degree of skill, diligence and attention used by such hospitals and clinics generally.

15. As a direct and proximate result of the negligence of the Defendant in failing to properly diagnose Cauda Equina Syndrome, the condition of Mr. Blake deteriorated and worsened. That the foregoing occurred without any fault or want of care on the part of the Plaintiff Edward R. Blake herein and contributing thereto.

16. On July 1, 2006, Mr. Blake presented once again to the emergency room at the VA for consultation and treatment of his symptoms. That in connection with the foregoing, the Plaintiff came under the care and treatment of various doctors, physician's assistants, nurses, nurses aids and other medical personnel at the VA. The aforesaid medical personnel were acting in and upon the business of the Defendant and within the scope of their employment and relationship with

said Defendant in their course of treatment to the Plaintiff. At said time and place, a physician/patient relationship was established between Mr. Blake and the VA.

17. While under such care and treatment, the VA continued to mis-diagnose Mr. Blake's condition. The medical personnel who treated him failed to properly diagnose Mr. Blake as suffering from the classic symptoms of Cauda Equina Syndrome and failed to timely refer him for further testing, evaluation, treatment or to refer him to an appropriate medical specialist. In addition, the Defendant was careless, reckless and negligent in that said medical personnel failed to use that degree of care and skill ordinarily used by physicians and medical personnel engaged in practice; failed to give sufficient heed to the symptoms and/or symptomology exhibited by the Plaintiff; failed to make an adequate and proper examination of the Plaintiff; failed to take the necessary and immediate steps to alleviate the condition from which the Plaintiff was suffering; failed to perform and use proper tests, procedures and examinations in order to diagnose the condition from which said Plaintiff was suffering; failed to promptly adequately and properly refer said Plaintiff to a physician capable and qualified to diagnose and treat the condition from which said Plaintiff was suffering and otherwise rendered incompetent, improper and tardy medical care to the Plaintiff, Edward R. Blake.

18. In so treating Mr. Blake, Defendant's employees and agents deviated from standard approved medical practices and negligently failed to treat Mr. Blake with the degree of skill, diligence and attention used by and expected of such clinics and hospitals generally.

19. As a direct and proximate result of the negligence of Defendant in failing to properly diagnose Cauda Equina Syndrome, the condition of Mr. Blake deteriorated and worsened. That the foregoing occurred without any fault or want of care on the part of the Plaintiff Edward R. Blake herein and contributing thereto.

20. On July 2, 2006, the VA finally transferred Mr. Blake via ambulance to Millard Fillmore Gates Hospital at 3 Gates Circle, Buffalo, New York 14202 for a neurological evaluation where emergency surgery was performed that day.

21. If the condition of Mr. Blake had been properly diagnosed and an appropriate referral made, by the Veterans Administration Outpatient Clinic and Veterans Administration Hospital for specialist treatment, the condition could have been effectively treated and the resulting

permanent disabling outcome avoided which include permanent neurological and genito-urinary injuries; permanent disability to the lumbar spine and bilateral lower extremity neurological weakness and paralysis.

22. As a direct and proximate result of the negligence of the Defendant described above, Mr. Blake was caused to sustain permanent and painful injuries; disfigurement; disability; loss of enjoyment of life; loss of quality of life; emotional and psychological suffering, past, present and future, as well as loss of life expectancy; was prevented from following his usual and customary activities; was caused to be hospitalized and undergo medical care and attention; physician services; surgical care; x-rays and radiology and suffers from residual and permanent Cauda Equina Syndrome which includes permanent neurological and genito-urinary injuries, neurogenic bladder requiring catheterizing twice a day; urosepsis; bowel dysfunction; bladder dysfunction; permanent disability to the lumbar spine; spinal cord compression; saddle hypalgasia; bilateral lower extremity neurological weakness and paralysis; excessive weight loss; extreme pain; loss of function in all areas of the lower extremities; inability to ambulate without assistance and assistive devices; mental anguish, anxiety and depression, suffers from permanent and constant numbness in his legs and groin area, and is prevented by his condition from carrying on many basic and necessary activities of life.

23. On June 17, 2008, within two years of the date of the occurrence, Plaintiffs, individually, by and through a special process server employed by their counsel, served a "Claim for Damage, Injury or Death" form (Standard Form 95) on the Veterans Administration – Department of Veterans Affairs Office of Regional Counsel at 120 LeBrun Road, Buffalo, New York 14215.

24. Defendant, by letter dated January 25, 2010, denied said claim.

25 This suit is initiated within six months of the aforesaid denial and Notice of Final Decision.

26. A Certificate of Merit has been filed with the Complaint.

CLAIM FOR RELIEF
PERSONAL INJURY

27. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 26 of the Complaint herein.

28. As a direct and proximate result of the negligence of Defendant, the Plaintiff Edward R. Blake was caused to sustain pain, suffering, permanency of injury, permanent disability and loss of enjoyment of life; loss of quality of life, emotional and psychological suffering, past, present and future, as well as loss of life expectancy and will suffer injuries described above, which have caused and will continue to cause severe pain and suffering.

29. As a further direct and proximate result of the negligence of Defendant, Plaintiff, Edward R. Blake has incurred and will continue to incur medical and incidental expenses in an amount to be proven at trial.

SECOND CLAIM
LOSS OF CONSORTIUM

30. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 29 of the Complaint herein.

31. The Plaintiff, Roxanne R. Blake is the wife of the Plaintiff, Edward R. Blake.

32. That prior to and immediately before said incident, the Plaintiff, Edward R. Blake was a healthy and capable individual capable for caring for himself and his household.

33. As a result of the proximate result of the negligence of Defendant and the resulting injuries to the Plaintiff, Edward R. Blake, Plaintiff Roxanne R. Blake has been deprived and will continue to be deprived of the society, companionship, consortium and services usually provided by a spouse in good health and of unimpaired vigor and strength.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs pray Judgment be entered against Defendant as follows:

1. For general and special damages for the personal injury to Plaintiff Edward R. Blake in the sum of Twenty Million Dollars ($20,000,000.00);

2. For past and future medical expenses of Plaintiff in the amount to be proven at trial;

3. For loss of consortium of Plaintiff Roxanne R. Blake in the sum of Five Million Dollars ($5,000,000,00)

4. For costs of suit;

5. For such other and further relief as the Court deems just and proper.

THE MISERENDINO LAW FIRM
Attorneys for Plaintiffs

Dated: July 23 2010

By: ______________________
Joy Ellen Miserendino, Esq.